

A P P E N D I X

T O

*"Thoughts on Executive Justice," &c.*





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OCCASIONED BY

A CHARGE given to the GRAND JURY  
for the County of SURREY,

AT THE LENT ASSIZES 1785,

By the Hon. Sir RICHARD PERRY, Knt.

One of the Barons of His Majesty's Court of  
Exchequer.

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*immedicabile vulnus  
Ense recidendum, ne pari sincera trabatur.*

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*"Thoughts on Executive Justice," &c.*

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THE preceding little publication, owed its rise to the most sincere wishes for the public good. It was sent forth, with a desire of awakening, in the minds of THOSE WHOM IT PRINCIPALLY CONCERNED, a very serious attention to the distresses of their fellow-subjects, under their present *increased*, and still *increasing*, state of danger, from de-  
B *predation*

*predation and robbery.*—It was intended to lead to *one sad cause* of these, which arose from too great and indiscriminate an indulgence of those amiable, but ill-timed, exertions of lenity and compassion, which had so long been turned into incitements and occasions of evil, in the minds of wicked and profligate men; such, as having abandoned themselves to all manner of wickedness, had so far got the better of every motive and encouragement to the common duties of humanity, as to make themselves the public terror of all honest and virtuous people.

It was intended to recommend such an exertion of *punitive justice*,  
as

as to enforce that by *example*, which could not be effected by *precept*—To call in aid the laws of this country, for the security of the innocent and injured public—To lessen the number of crimes, by deterring men from the commission of them; and, by a *certainty* of punishment, to take away those inducements and allurements to evil, which so frequently are derived from a too-well founded *hope* of *impunity*.

It was to shew, that, whatever can induce men to the commission of crimes, must, in the end, bring them to destruction; that, therefore, rendering the punishments of the Law *uncertain*, must, by inducing men to commit crimes, in



the end bring them to destruction; and that, for this reason, however the reprieving and pardoning convicts might, on the particular instant, bear the semblance of *mercy*, yet it was the highest *cruelty* to all who were encouraged to offend, and thus brought *at last* to *feel*, what they imagined they had little *reason* to *fear*.

That not only those, who had received *mercy*, were induced to go on in their evil courses, but that many were drawn in to venture upon the like, by the hope which they themselves conceived from the *impunity* of others.

That *reprieves* and *pardons* had brought more to the *gallows*, than they

they had ever saved from it—and that, on this account, as well as on that of the insulted and suffering public, a steady, impartial, dispassionate execution of the laws, must be the only means, by which the public safety can be insured, or the persons and properties of individuals be protected.

In short, the whole, at least the principal arguments in the said publication, may be collected into the small compass of the following syllogisms.

I. *That system of police is the least*

*likely to prevent crimes, which holds forth an uncertainty of punishment.*

edT

B 3

But

But our present system of police holds forth an *uncertainty* of punishment.

Therefore, our present system of police is least likely to prevent crimes.

## II.

That system, &c. is the most *merciful*, which is the most likely to prevent the commission of capital offences.

But that system which holds forth a *certainty* of punishment, is the most likely to prevent the commission of capital offences.

Therefore, that system, &c. is the most *merciful*.

The

The above contain the principles, and chief arguments, of the *book*: these are illustrated by various anecdotes, by way of examples; and the conclusion to be gathered from the whole is, that the very *police* itself must sink into contempt—the whole kingdom be over-run with *banditti*—and the lives and properties of the sober, industrious, and virtuous part of the community be left in the hands of those, who are the declared and avowed enemies of every principle of law, justice, and even of common humanity.

To step forth, therefore, in the cause of public safety, to apply, in the most earnest manner, to those

SUPERIOR MAGISTRATES, to whose care is committed the administration of public justice, and on whose exertions of their great abilities as *men*, as well as of their high and salutary powers as *magistrates*, our ALL must depend, cannot, I should humbly hope, have so unfavourable a construction put upon it, as to ascribe it to any other motive, than to such as becomes, what the author has stiled himself in his *title-page*, A SINCERE FRIEND TO THE PUBLIC.

It was some pleasure to the *author*, to find, that his little, well-meant performance, had been in some measure attended to, by those to whose judgment it had been submitted,



submitted \*, and to whom it had been particularly addressed. It had the honour of being noticed, in the *Charge* which was delivered to the *Grand Jury*, by a learned and worthy Judge, Mr. BARON PERRY, at the late *assizes* for the county of *Surrey*.

And here I would observe, that *Charges to Grand Juries* are matters of much higher importance, than, of later times, they have been made: the wisdom of our ancestors in their institution, from very early times, has been handed down to us; and two very weighty reasons may be supposed for the original of

\* The Author thought it his duty to send a copy of the pamphlet to each of the twelve *Judges*.

*Charges to Grand Juries.*—First, That they should have delivered to them, on the best and highest authority, that of a learned Sage of the Law, the whole of their duty (as defined and limited by the laws of the land) for the due execution of that awful and solemn trust with which they are invested, as appointed to stand between the *Crown* and the *Subject*, in the investigation of those offences where life and liberty are concerned, so as to determine whether these *shall*, or *shall not*, be put in question at the *Bar*.

As these *higher inquests* are usually composed of gentlemen of rank and education in the county, the subject is so far safe: — because  
such

such persons may be presumed to be above every other consideration, than that of the most disinterested and impartial justice: but the study of the Law, and, consequently, an accurate and intimate acquaintance with it, is usually far removed from the enquiries and pursuits of men in the higher and independent stations of life: it is, therefore, highly expedient, that the *Judge* should inform them, not only of the nature and design of *Grand Juries*, but, by expatiating on the Law relative to the offences to be brought before them, as they appear in the *Calendar*, to make their duty easy and plain, with respect to their *finding*, or *not finding*, bills against such of their fellow-

fellow-subjects as may become the objects of their enquiry.

I am sorry to say, that the beaten track of multiplied and repeated offences of the same kind, such as *highway robberies, burglaries, horse-stealing*, and the like, leaves very little new matter for the *Judge* to expatiate upon; and therefore he may certainly deal in general terms, without troubling himself to descend to particulars on these heads, as far as the *Grand Jury* is concerned. But,

Secondly, Let us remember, that the *Crown Court* is usually thronged, on these occasions, with by-standers of various descriptions—among the rest, no doubt, with profligate and  
thought-

thoughtless people, who might reap an essential and lasting benefit from an able and well-delivered *Charge*:  
 —The offences then to be tried—the punishments which the Law has annexed to them—and the dreadful consequences of all departures into the ways of vice, dishonesty, and rapine, might be mentioned in such a manner, as to leave a most salutary impression on the minds of the hearers, and determine many to the side of sobriety and *virtue*, if from no higher principle, yet from the fear and dread of that punishment, which must be met with in the ways of wickedness and vice. One *convert* thus made, would do more honour to the *Judge*, and give  
 him



him more heart-felt satisfaction, could he be acquainted with it, than can well be imagined.—Therefore it were to be wished, that a *Charge* were always conceived and delivered, with a desire and hope of this sort.—

But I am digressing from the main purpose of this Appendix.

The *Learned Judge* began his *Charge*, with a solemnity and decency well becoming his own situation, as well as that of the *Gentlemen* impannelled on the *Grand Inquest*, whonow stood before him.

After some prefatory matter, his *Lordship* assigned “ his first appearance on the *Home-Circuit*, as a “ reason for his wishing to detain “ them

“ them some time longer, than he  
 “ otherwise might have done, while  
 “ he acquainted them with his sen-  
 “ timents on the causes of the in-  
 “ crease of robberies, and other  
 “ depredations on the public.”

His *Lordship* mentioned, as one  
 probable cause, the “ disbanding  
 “ so many soldiers, sailors, and mi-  
 “ litia-men, which must be the case  
 “ after a war. That these people \*  
 “ might not perhaps readily find  
 “ employment, or did not seek for  
 “ it, and thus, from an idle and mis-  
 “ chievous disposition, were easily

\* The *Learned Judge* could not be supposed to  
 be apprized of it, but I was informed by one of  
 the *Grand Jury*, that there were not any prisoners  
 of these descriptions in the *Calendar*.

“ tempted

“ tempted to the commission of  
 “ crimes.”

Another cause of evil, and which his *Lordship* stated with a becoming seriousness, he imputed to the  
 “ grievous profanation of the *Sabbath-day*; to the multitudes of  
 “ public houses of amusement, dissipation, and drunkenness, which  
 “ were opened for the reception of  
 “ the lower kind of people; that  
 “ in these houses were to be found  
 “ the dissolute and profligate of  
 “ both sexes; and many a poor  
 “ youth had been seduced, by the  
 “ company which he met with at  
 “ such places, into the commission  
 “ of crimes which brought him to  
 “ the gallows.”

His

His *Lordship* might here, with too much reason, have gone further, and have observed, that the profanation of the *Lord's Day* is by no means to be confined to the *lower* classes of the people, but, as these are fond of imitating their *betters*, many of them, as servants in some great families, may at first be supposed to have learned to despise and profane the *Sabbath*, from the neglect and contempt of all religious ordinances, which they must have seen constantly before their eyes, in the profligate examples of their masters and mistresses.

*His Majesty's* proclamation against vice, profaneness, and immorality, had just been read, of which his

C

*Lordship*

*Lordship* made a very pertinent and sensible use:—He mentioned, with a becoming zeal, *His Majesty*, “ as  
 “ *himself* being a bright example  
 “ of what that proclamation re-  
 “ quired, and, in his private and  
 “ domestic life, as a pattern well  
 “ worthy the imitation of his sub-  
 “ jects.”

I would here observe by the way, that, of all our national sins, that of profaning the *Lord's Day*, even in a *political* view, is one of the most dangerous.—What security can we have for the honesty of tradesmen, for the fidelity of servants, for the obedience of children, or, in short, for the observation and performance of those civil  
 and



and relative duties, which are essential to the peace, comfort, and happiness of our common life, if men have all religious awe, all reverence of religious obligations and ordinances, eradicated from their minds, so that they are taught to live *without God in the world*?

What must the lower kind of people think, when they see *coach-fulls* of the nobility and gentry, either purposely travelling the roads on a *Sunday*, or whirling about from one assembly to another; thus making it a time of amusement and recreation——totally regardless of the respect and honour which is due to the day? What are the opinions, which servants in

great families must form, of the importance of religious observances, as means to solemnize the minds of men, when they too often see their masters and mistresses pay no regard to them whatsoever; and not only this, but even worse, when they see them trodden under foot, and even laughed at?

Can we wonder then, that the servant, when out of place, having been taught to \* cast off all ties of religion,

\* *Juvenal*, at the end of Sat. ii. attributes all the vices of *Rome*, which he has made the subject of that Satire, to infidelity and irreligion; he tells us that the very *children* were led into these at an early age.

*Esse aliquos manes, et subterranea regna,  
Et contum, et Stygio ranas in gurgite nigras,*  
*Alque*

religion, should have a conscience void of sacred obligation?—that he should easily be prevailed upon, to shew his comrades the way into his master's house, and direct where to find the richest booty?

Another matter mentioned in *His Majesty's* proclamation, is *profane cursing and swearing*: this foolish,

*Atque unā transire vadum tot millia cymbā,  
Nec pueri credunt, nisi qui nondum are lavantur.*

L. 149—152.

To what dire cause can we assign these crimes,  
But to the reigning Atheism of the times?  
Ghosts, Stygian lakes, and frogs with croaking  
note,

And *Charon* wasting souls in leaky boat,  
Are now thought fables, to fright fools conceiv'd,  
Or children, and by children scarce believ'd.

TATE.

unprofitable, yet daring insult on the name and holiness of the *Almighty*, is another crying sin among us—and is not only evil in itself, but much tends to promote and strengthen those evil habits, which, sooner or later, plunge men into perdition. In this respect, the lower kind of people receive much countenance and encouragement from their *bettors*, if *bettors* they may be styled, who put themselves on a level, as far as blasphemy and profaneness can do it, with *thieves* and *blackguards*.

Another source of evil mentioned in the proclamation, is of as disastrous a nature, with regard to the morals of men, as can well be conceived;

conceived; that is to say, *Gambling*.  
 —This is a *vice*, which seems now  
 to have taken full possession of peo-  
 ple of all ranks and degrees\* :

\* *Et quando uberior vitiorum copia ? quando  
 Major avaritiæ patuit sinus ? Alea quando  
 Hos animos ? neque enim loculis comitantibus itur  
 Ad casum tabula, posita sed luditur arcâ.  
 Prælia quanta illic dispensatore videbis  
 Armigero ? Simplexne furor sestertia centum  
 Perdere, et torrenti tunicam non reddere seruo ?*

Juv. Sat. i. l. 87—93.

What age so large a crop of vices bore,  
 Or when was avarice extended more ?  
 When were the dice with more profusion thrown ?  
 The well-fill'd fob not empty'd now alone,  
 But gamesters for whole patrimonies play :  
 The steward brings the deeds which must convey  
 The lost estate : What more than madness reigns,  
 When one short sitting many hundreds drains,  
 And not enough is left him to supply  
 Board wages, or a footman's livery ?

DRYDEN.



And the only difference of its effects, on its votaries, seems to be this :—it brings many of the *higher* sort to ruin, which ends in a *gaol*—of the *lower*, into habits of idleness and want, which end at the *gallows*. As for those whose privileges protect their persons—their ruin tends to reduce them to a state of mean-ness and venality, which renders them disgraceful to their rank as *men*, and dangerous to their country as *senators*.

In vain do the laws remonstrate against this most pernicious evil :—those who can set at defiance obligations of a more important nature, pay no regard to human authority ; and hence it is that *gaming-houses*,

*houses*, of all sorts, are open for the reception of all, who are thoughtless and profligate enough to attempt the *ruin* of *others*, at the hazard of *their own*.

But I digress——

The learned *Judge* then observed, that “ the *lenity* of the *Judges*, and  
 “ the frequency of *reprieves* and  
 “ *pardons*, had been assigned, by  
 “ some, as reasons for the increase  
 “ of robberies :” he said, that “ he  
 “ was induced to mention this, on  
 “ account of a late publication, in  
 “ which the learned author had  
 “ laid it down for a maxim, that,  
 “ except where the evidence was  
 “ not satisfactory, and in some  
 “ other instances mentioned in the  
 “ book,

“book, *Judges* ought to execute  
 “all they convict.—This,” adds  
 the *learned Judge*, “would be  
 “making our laws like the laws of  
 “*Draco*, which, from their seve-  
 “rity, were said to be written in  
 “blood.”

It is no small disadvantage to a  
 work, to be held forth for judg-  
 ment, as to its real intention, from  
 a mention of a detached paragraph,  
 or of a single and unexplained  
 proposition. From the manner in  
 which the *learned Judge* did this,  
 the auditory must conclude, that  
 the author must be a very cruel and  
 blood-thirsty person, who wished  
 for laws of the most *sanguinary*  
 kind, to be executed with the most  
 unrelenting

unrelenting severity, wherever the *conviction* of an offender could afford an occasion.—Nothing could be farther from his thoughts !

In the first place, I would answer, that no where, throughout the whole book, is the *Judge's* power of *reprieve* denied, or found fault with, but where it is exerted *wantonly* and *indiscriminately*, as well as *inconsistently* with the *public good*. Where *Judges* indulge their *feelings* as *men*, so far as to forget their *duty* as *magistrates* (in whose hands the administration of justice is placed by the constitution, for the *good of the whole*) there the public suffers in the escape of offenders from punishment—because, this not  
only

only tends to the encouragement of those who are already embarked in villainy, but to draw others in to the commission of crimes, from the hope of *impunity*, which such ill-timed lenity holds forth to them. As to the position itself, "that *Judges* ought to execute all they convict, except in a few cases," it stands very fully explained (p. 30) in the following words—

"A *Judge*, who can see a fellow-  
 " creature stand before him, under  
 " circumstances of the deepest guilt,  
 " and exposed to the severest pu-  
 " nishment, without feeling the ut-  
 " most pity and compassion, must  
 " be a *monster in nature*: little bet-  
 " ter must he be, who does not  
 " *gladly*



“ *gladly* embrace *every* opportunity  
 “ of shewing *mercy*, where it can  
 “ be done consistently with the  
 “ safety and welfare of the public.  
 “ But, on the other hand, these  
 “ ought to be uppermost in the  
 “ *Judge’s* thoughts; for where *these*  
 “ are sacrificed, in any degree, it is  
 “ not *mercy*, but *folly* and *injustice*,  
 “ to *reprieve*; and such *reprieves*,  
 “ having, no doubt, brought more  
 “ to the gallows than they have  
 “ ever saved from it, are not to be  
 “ esteemed acts of *mercy*, but are a  
 “ species of *cruelty*: drawing in  
 “ men to commit capital offences,  
 “ under a notion of *impunity*, is  
 “ very mischievous, not only to the  
 “ criminals themselves, but to those  
 “ who

"who suffer by their outrages,"  
&c.

I would also refer the Reader to p. 48, 49, 50, where the *Judge's* power of *reprieve* is not only allowed, but acknowledged with thankfulness: and many instances are mentioned, and others alluded to, where the *Judge* ought to exert this power, and where, if he does not, he cannot be said to execute *judgment in mercy*.

How is this making our laws like those of *Draco*?

To those instances alluded to (p. 50) I have thought, since the publication of the book, that I might have particularized one, which is of very great consequence,  
in

in favour of *reprieve*—and that is, where the offence may come within the *letter* of the law, but not within the apparent meaning and intent of it, as to the *capital* punishment which it inflicts. Here it may be right for the *Judge* to direct the *Jury* to acquit the prisoner; but, if not this, yet to *reprieve* the offender, that he may undergo a slighter punishment, and one more adapted to the nature of his crime, than could be derived from the rigour and severity of the law itself.

To illustrate my meaning, I will relate the following case. On one of the circuits, a poor fellow was indicted, and convicted of *burglary*.

The

The case was, that as he was walking along the village where he lived, he saw a piece of bacon lying in a window, which said bacon was about a pound weight. After it was *dark*, the fellow came to the window, broke a pane of glass, put in his hand, and stole the bacon. Now, that this was, in strictness of law, a burglary, there can be no doubt:—here was a breaking of the house in the night; an entry, by introducing his hand; and the felonious intent appeared, by his stealing and carrying away his booty.

The learned and worthy *Judge* reprieved the convict, as wisely determining in his own mind, that  
such

such a paltry offence as this, though in strictness made capital by the letter of the law, could never fall within the intention of capital punishment.

Such cases as this are undoubtedly to be left to the humanity and discretion of a *Judge*, and on such occasions as this it is, that he is to exercise *judgment* with *mercy*. According to *Horace*,

——— *Adsit* ———  
*Regula, peccatis quæ pœnas arroget æquas,*  
*Ne scutica dignum horribili sectere flagello.*

LIB. i. SAT. 3. l. 117—119.

But what has all this to do with turning loose upon the public notorious and desperate villains, who, on the clearest evidence, are proved

D                      guilty



guilty of offences, which are inconsistent with the peace, good order, and safety of society? What can the public say to this, but, with TULLY — *Effudistis in me carcerem!*

As the laws of *Draco* were mentioned by the learned Judge, it may be worth our while to consider a little who this *Draco* was, and what were his *Laws*.

*Draco* lived about 623 years before CHRIST, and was *Archon* (Gr. ἀρχων) or chief magistrate, at Athens. We have but very short and imperfect accounts of this man, but he is said to have punished all things with death; even indolence, or the taking an apple, was as severely punished as sacrilege—for which

which he himself assigned this reason:—“ Small faults seem to  
 “ me worthy of death, and for the  
 “ most flagrant offences I can find  
 “ no higher punishment.” See  
*Ant. Univ. Hist. Vol. vi. p. 292—3.*

——I can only say, that if such a man appeared among us, it would be the best thing which could be done with him, to shave his head, and put him into *Bedlam*; and I much question whether, among all the *lunatics* there, *one* would be found farther gone from all principles of sound judgment and discretion, than a man who could invent such laws, and give such reasons for so doing.

As to the Laws of *England*, they must, abstractedly and specifically considered, be just what they are, whether executed or not. It was not possible for the Legislature to foresee every event or circumstance, which might appear on the trials of offenders; it is therefore, that the wisdom and discretion of the *judge*, is to remedy the defects of human foresight, and to take care, that the *spirit* and *intent* of the Law be duly observed in every case: and I own, I cannot conceive, that executing people, who, by their offences, make it difficult to travel the roads, to walk the streets, to sit by our own fire-sides, without danger of being robbed, and perhaps worse

—or

—or to turn our horses and other cattle into our fields, without the hazard of losing them—can bring the Laws of *England* into the least similitude to a system, which put a man to death for taking an *apple*.

The learned Judge then said—  
 “ That it had been disputed among  
 “ *theological* writers, how far the  
 “ *Jewish Law* is repealed, or how  
 “ far it is lawful to put men to  
 “ death among *Christians*.”

As for *theological* writers and disputants, I have read enough of them, to make me narrow my studies of that sort, to those who, being divinely inspired, can neither lye nor deceive: and indeed, the learned *Judge* seemed of the same opinion;

for his *Lordship* appealed to the Scriptures of the *New Testament*, for a proof, that it is lawful, among Christians, to put men to death for certain crimes.

The first text his *Lordship* mentioned, was *Rom. xiii. 4.* “*For he (the Magistrate) beareth not the sword in vain.*”

The *sword* is an instrument of death, and stands here, metonymically, to denote *capital punishment*; and this sentence, therefore, evidently proves the power of magistrates to put criminals to death, otherwise these magistrates would bear the *sword in vain*.

But



But one might carry the text farther, and say, that the magistrate bears the sword in vain (*εὐχρη*) to no purpose, if laws are not duly put in execution. The wholereasoning of the context implies this.

Ver. 3. *Rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? —do that which is good, and thou shalt have praise of the same.*

Ver. 4. *For he (the ruler or magistrate) is the Minister of God to thee for good: but if thou do that which is evil, be afraid: for he beareth not the sword in vain, for he is the Minister of GOD, a revenger (*εκδικος* *εἰς**

*ogyn*—an avenger—to execute wrath or punishment) *upon him that doeth evil.*—A stronger passage cannot be produced, to prove, that it is not only *lawful*, but the *magistrate's* absolute and indispensable duty, to punish offenders according to law: that he is God's Minister for this very purpose.

Ver. 5. *Wherefore ye* (Christians—even then, living under an heathen government) *must needs be subject*—i. e. to the *Laws* of the state—not only for *wrath*—not only with respect to the punishment which will otherwise ensue—but for *conscience sake*—i. e. towards God—who, ver. 1. commands every soul to be  
subject

subject to the higher powers, and, of course, to obey the Laws.

The other text, mentioned by the learned Judge, was Acts xxv.

11. where the Apostle Paul says, before Festus, the Roman Governor,

at his judgment-seat—"If I be an offender, or have committed anything

"worthy of death, I refuse not to die." This text is also much to

the purpose, and justifies our Reformers in declaring—ART. 37.

"Of the Civil Magistrates"—that "the Laws of the Realm may pu-

"nish Christian men with DEATH, for heinous and grievous of-

"fences."

His Lordship next introduced the character of our Saviour, as furnishing

furnishing an example of meekness, lowliness, compassion, and mercy—which he seemed to do, by way of a gentle reproof to the *Author*, for finding fault with the lenity of the *Judges*, in granting *reprieves* so often to convicts. His *Lordship* spake, on this point, with a reverence and seriousness, that did him honour; and, as an instance of the pity and forbearance of the “*Blessed Jesus*” (as his *Lordship* expressed himself) he mentioned the case of the *woman* taken in *adultery*, whom the *Pharisees* brought to Christ.—But if we examine that passage, we shall find, that *our Lord* was not sitting as a *Judge*: this was a character which he never bore

bore on earth—so far from it, he renounced it, both as to *civil* and *criminal matters*. See Luke xii. 14. John viii. 15. and xii. 47.—If we would see him as a *Judge*, we must look upon him, as exalted to the right hand of God, where he will sit at the last day, as the great Judge of quick and dead.—He then will *judge the world in righteousness, and the people with equity*. Ps. xcvi. 9. Comp. Acts xvii. 31.—*He will render to every man according to his deeds, &c.* See Rom. ii. 6—12.—Happy would it be for the *Judges* of the *earth*, as well as for the *people* of the *earth*, if all *magistrates* would set before them the character of CHRIST as a *Judge*; the *Laws* would then



then be duly honoured, and the majesty of government duly preserved; for the *certainty* of punishment would make men fear to offend. They fear little of what is to come, because they don't believe it; but what they see before their eyes, must strike them with terror.

As to the case of the woman taken in *adultery*, which we find recorded *John* viii. 3—11. She was brought before CHRIST by her accusers, not for the sake of *justice*, but with a malicious design against CHRIST himself, as we may learn from ver. 6. where it appears, that, all they said on the occasion, was merely to *tempt* OUR LORD, to try whether they could not have something

thing,\* *to accuse him* of, either as presuming on an authority against the *Roman* government, if he condemned her, or against the law of *Moses*, if he did not;—but he defeated their malice, and escaped the snare, by leading her accusers into a condemnation of themselves, insomuch that they departed, self-convicted, and left the woman.—Then *JESUS*, who came not to *condemn the world*, nor to exercise a judicial power in punishing criminals—but even in this very instance renounced it—dismissed the woman, with a caution, which doubtless looked farther than the present life. Comp. John v. 14.

\* Comp. Matt. xxii. 15. and Luke xx. 20—23.

On this case I would humbly propose two questions—

1. What it has to do, one way or other, with a *repeal* of the *Jewish Law*?

2. What precedent can it possibly afford, for a *Judge* to turn out three fourths of the capital convicts upon the public?

As to the imitation of CHRIST, it is not only the *duty*, but the great *privilege* of CHRISTIANS. He left them an *example that they should follow his steps*; and it is their glory so to do; in nothing more than in the *forgiveness of injuries*.—He could, in his very last *agonies* upon the *cross*, pray for his *persecutors* and *murderers*.—He could even, as

it

it were, *palliate* their offences, by pleading their *ignorance*, instead of aggravating it, by reproaching them with their *malice*.—"Father, forgive them!—they know not what they do!"—said the DYING JESUS.—His whole life was a pattern of meekness, gentleness, love, and forbearance.—"LORD," said Peter, "how oft shall my brother sin against me, and I forgive him?—until seven times? JESUS saith unto him, I say not unto thee, until seven times, but until seventy times seven."—OUR LORD was a bright example of his own precepts; and we are told, 1 JOHN, ii. 6. that, he that saith he abideth in HIM, ought himself

*himself also to walk, as HE also walked.*

Such are the precepts, which must be looked upon as commentaries on the *Divine Law*, that saith—*Thou shalt love thy neighbour as thyself.*—They are the *golden rules* by which all *Christians* ought to walk.—The *King* and the *Subject*—the *Prince* and the *Beggar*—the *Judge* and the *Prisoner*, are here all alike concerned; for *there is no respect of persons with God.*

But when it is considered, that a *Judge* does not sit in judgment as a *private person*, but in a very high and distinguished *public* character—his duty is not to be measured by *private* considerations, or estimated  
from



from personal motives, but from those Laws of which *he is the Minister*, and from that *justice* which he owes the public.—As a man, he would be *sinful*, were he personally to avenge an injury done to himself; but, as a *Judge*, it would be as *sinful* not to execute the Law on injuries done to others—for in this light, *he is an avenger to execute wrath* (or punishment) *on them that do evil.* Rom. xiii. 4.

MR. DRYDEN, in his preface to *Juvenal*, well observes, p. xxv. that  
 —“ God has placed us in our several  
 “ stations ; the virtues of a *private*  
 “ *Christian* are patience, obedience,  
 “ submission, and the like ; but  
 “ those of a Magistrate, or General,

E

“ or

“ or a King, are prudence, counsel,  
 “ active fortitude, coercive power,  
 “ awful command, and the exer-  
 “ cise of magnanimity as well as  
 “ justice.”

The *Law* forbid the *Jews*, as  
 well as *Christians* (for there is but  
 one moral *Law* for either) to *avenge*  
*themselves*—or even *to bear a grudge*  
*against any*, LEV. xix. 18.—Yet the  
*same Law* says, in one of its judicial  
 institutes, LEV. xxiv. 20.—*Eye for*  
*eye, tooth for tooth, &c.*—from which  
 we may learn, a clear and utter  
 discrimination of *acts*, or even *in-*  
*tentions*, of private revenge, from  
 the infliction of punishments by  
*courts of justice* for public injuries.  
 —The *first* may answer the pur-  
 poses

poses of *private malice*—but the *other* is absolutely necessary for the preservation of the *public safety*—and this distinction is most indubitably to be understood, in what OUR LORD says, *Matt. v. 38. 39.* He there meant to shew the spirit and temper with which we ought to *forgive* those who *injure us*—not to tie up the hands of the civil *magistrate* from executing the Law;—for if so, there must be an end of all *civil government* whatsoever.

His *Lordship* then concluded, with saying, that “if *Judges* were expected to execute the Law upon those who were convicted, the *Grand Jury* ought to be very cautious, how they exposed

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“ people

“ people to a trial, by finding bills  
 “ against them—that they should  
 “ find no bill, unless the evidence be-  
 “ fore them was sufficient to convict  
 “ the prisoner, supposing it prov-  
 “ ed at the bar, and uncontradicted  
 “ by the prisoner’s witnesses.”

Lord Coke, somewhere, says the  
 same thing; and this rule is not  
 only a very good one, with respect  
 to exposing men to trial for their  
 lives, but the finding of a *Grand*  
*Jury*, may expose people to a sort  
 of *stigma*, which, however innocent  
 they may be, they may never get rid  
 of.—For this reason also, the *Grand*  
*Jury* should be very attentive and  
 careful in the execution of their  
 duty.

I had

I had almost forgotten to mention one more observation of the learned *Judge*—which was, on “the  
 “ number of *sanguinary* Laws, in  
 “ our statute books, some of which,  
 “ his *Lordship* observed, were of  
 “ long standing, others of more  
 “ recent date, and” (adds his *Lordship*) “ the only reason which I  
 “ can assign for these Laws being  
 “ either suffered to remain from  
 “ old time unrepealed, or being  
 “ more recently enacted, is, that  
 “ the *Legislature* trusted to the discretion of the *Judges* as to their  
 “ execution.”

I do not pretend to give his *Lordship's* exact words, either in this, or in any other quotation from



*the Charge*; but I hope, that neither here; nor elsewhere, have I mistaken or misrepresented what was said.

I must confess, that my apprehension is at a loss to conceive the idea of the *Legislative* power of a country, enacting a Law for any *purpose* whatsoever, which they do not mean to be executed. That they should enact Laws, with an intent that the *executive power* might suspend their operation, appears to me to be giving themselves a very needless *trouble*, which might have been *spared*, by not enacting such Laws at all.

The word *sanguinary* carries with it a very dreadful meaning, like  
its

its plain-*English* synonymy—*bloody* :  
 —it brings sensations into the mind  
 of the most terrible nature ; and,  
 when applied to Laws, it imports,  
 that they are arbitrary and cruel,  
 like the Laws of *Draco*, which were  
 calculated for the destruction and  
 misery, not for the preservation and  
 happiness, of mankind.

A Law may be *severe*, without  
 deserving the name of *sanguinary* ;  
 and though the *former* may be justly  
 applied to some of our penal sta-  
 tutes, yet the *latter* never can. A  
 Law which has for its object, and  
 is therefore calculated to promote,  
 the security of peaceable and virtu-  
 ous people, may justly be styled a  
*merciful* Law, as it regards the *whole*,

though *severe* in its punishment of offenders; and, if without such *punishment*, the *good of the whole* cannot be secured, and promoted, this must arise from the audacity and profligacy of those enemies to their fellow-subjects, who will not be intimidated by gentler methods, and who therefore bring upon themselves that *wholesome severity*, which is to make them examples of public justice, that others may fear to offend.

As to leaving the execution or non-execution of statutes to the disposal of the *Judges*, it is ultimately resorting to the fancy or will of individuals, and bringing us to the—*Misera servitus, ubi jus est*

*est vagum aut incognitum.* Who can attempt to say, what the consequences of *offending* may be, when, instead of deducing, or apprehending, the *consequences* from the words and plain meaning of the *Law itself*, they are to be suspended, on the uncertainty of private determination?

The Law, whether we understand the Common Law, or Statute Law, antient or modern, certainly means, that we should travel the roads, live in our houses, sleep in our beds—in security and peace. It means—that we should turn our horses, sheep, and other cattle, into our fields, without having them stolen from us—that every species of valuable property should be secure  
in



in our possession—and that our persons should be safe from the outrage and violence of wicked and desperate robbers.—It means, that we should live in peace and quiet, without fearing either by day or night, and without apprehension of danger, *wherever*, or *whenever*, our lawful business calls us forth.—It cannot, therefore, mean to be suspended in its operation.

The *severity* of our Laws, such is the depravity of human nature, is the only *security* we have left us, for insuring any of these things to us; and I do most firmly believe, that, if the Laws had taken their due and steady course, we should not have had a *twentieth part* of the mischief



mischief that has been done, nor have put to death a *twentieth part* of the wretches that have suffered—and that the indiscriminate, partial, causeless, and undue manner, in which the operation of the Law has been defeated, has brought us to the pass we are now arrived at, which is so alarming and terrible, as to call for all the exertions of *public justice*, to save us from *anarchy* itself.

I can feel very sensibly for MEN, whose office it is to stem the dreadful torrent, swoln to its present height, and deluging the poor, oppressed, and violated public, from the neglect of *those*, whose duty long ago called upon them, to check its course.

course. The very attempt must be attended with consequences of the most disagreeable kind; but still, every thing ought to give place to the public safety—and every other consideration be laid aside, but that of restoring (in a measure at least) the peace and welfare of society.

I now have finished what has occurred to me on his *Lordship's Charge*; but, before I conclude, I must acknowledge, that the civility and politeness with which *his Lordship* delivered his mind, ought not to be forgotten; in this he set an example that did him great honour, and justly deserved the esteem of all that heard him, of none more than of the Author.

As

As for myself——if any should  
ask me, in the language of TER-  
ENCE——

—*Tantumne ab re tuâ est otii tibi,  
Aliena ut cures, ea quæ nihil ad te attinent ?*

I would answer, like *Chremes*——  
HOMO SUM : *humani nihil a me alienum puto.*

HEAUT. ACT. I. SC. I.

I most entirely agree with SHAKE-  
SPEARE——

*The quality of MERCY is not strain'd :  
It droppeth as the gentle rain from heaven  
Upon the place beneath : it is twice blessed ;  
It blesteth him that gives, and him that takes :  
'Tis mightiest in the mightiest ; it becomes  
The throned Monarch better than his crown :  
His sceptre shews the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of Kings ;  
But MERCY is above this scepter'd sway,  
It is enthroned in the hearts of Kings,  
It is an attribute to GOD himself ;  
And earthly power doth then shew likest GOD's,  
When MERCY seasons JUSTICE.*

MERCH. OF VEN. ACT. iv. SC. I.

But,

But, very consistently with all this, I do most unreservedly declare, that, if all the *wild beasts* in the *Tower* were to break loose, and *twelve soldiers*, armed with *loaded muskets*, and having it in their power to destroy them, did not—nothing can be clearer to me, than that they would be answerable, before God and man, for all the mischief which should happen from their neglect.

I ought, indeed, here to apologize to the *gentler savages* of the *Royal menagerie*, for the comparison above hinted at; they, from the instinct of nature, roam for prey to satisfy their hunger, but *human brutes* prey on their own species, to gratify their wickedness.



The inhabitants of countries, where droves of *wolves* are forced into the villages and towns by night, by the severity of weather, to seek for food, are yet safe when within their houses—their flocks are also safe, when locked up within their folds—But is this the case with us? where *are* we—where *can* we—now be safe, either by day or night? What farmer, what proprietor of any cattle whatsoever, can secure his property from the ravages of robbers? And yet what thief, in this last respect especially, has much occasion to fear the Law?—let the *reprieves* at every *assizes* give the *answer*.

There is a certain *theatrical* exhibition, equalled in point of wit,  
humour,



humour, and fine writing, by none that has appeared since its first representation, and not *exceeded* by any that went before it—its poignant and masterly vein of satire, which runs throughout the whole, is quite lost upon the lower class of people, and little of the piece may be supposed to remain on their minds, but the *mischief* of it:—this is exceedingly great—and I should suppose, that it is hardly to be doubted, that many a wretched youth, under the first drawings and beginnings of dishonesty, has been determined on the most flagitious courses, from a *noble ardour*, which has been kindled in his imagination, to imitate the illustrious Hero of the

the *Beggar's Opera*: where vices of the lowest, the most abandoned, and of the most mischievous kind, are represented rather as accomplishments than as defects—their deformity is concealed under a garb of pleasantry—their dangerous tendency to the public is made a jest of—and their deserved consequences to the villain are removed out of sight by the *catastrophe* of the whole.—To prepare us for this, we see the *chief* of a gang of highwaymen—in the *condemned-hold* in *Newgate*—under sentence of death, and, just before his execution, *singing songs* and *drinking brandy*.—The *Sheriffs* arrive—he is going forth to *execution*, to receive the just reward of his

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deeds

*deeds*—when lo! a *reprieve* comes—  
 —he is brought back in triumph—  
 he joins his whores and old companions—he sings a lewd song to a merry tune; the conclusion of which contains a *maxim*, that we are to suppose to be the *marrow* of the whole piece, and which tends to eradicate every thoughtful impression, which may have been made by the danger of the *hero*, before the *reprieve* came—thus it stands:

*Then think of this maxim, and put off all sorrow,  
 The wretch of to-day may be happy to-morrow.*

Then, lest this *maxim* should be forgotten, or lose its effect on the profligate part of the audience—

the same tune is often repeated to a jovial dance, performed by *Macbeath* and his companions—and so ends the piece.

From the above *maxim*, villains are encouraged to hope for *impunity*, and if ever they find themselves liable to qualms and fears, upon setting forth on their ravages—these are to be dissipated by *thinking of this maxim*, &c. Nay, even if convicted—if having received sentence of death, and death stares them in the face—yet *hope* is to be encouraged to the last—all repentance and sorrow, for their sins and wickedness, is to be *banished*—they are to be hardened against every religious and moral impression—and thus exhibit an ex-



ample—a most mischievous example, of hardness and obduracy, in the eyes of all, who, like themselves, are accustomed, by the frequency of *reprieves*, to “*think of this maxim, and put off all sorrow, &c.*—That such a performance as this should be suffered in any civilized country, has been, and still is, the amazement of many.

How different a performance is that of the *George Barnwell* of Lillo? In this, we see an amiable and innocent youth, drawn, by the artifices and treachery of a wicked woman, into the paths of vice—“artless—himself, he suspects no art”—till, ensnared soul and body, we behold him a capital convict.—He



has robbed his master—murdered his uncle—and, in all the depth of woe, aggravated by all the circumstances which are naturally and judiciously introduced by the *Poet*, this unhappy victim is led forth to public ignominy and death — exhibiting a striking lesson to all the beholders, and an awful caution against the first solicitations of vice.

The plainness and simplicity of the language—the interesting events throughout the whole—the deceitful manner in which vice represents itself to the imagination—the degrees by which it first *ensnares*, and then *enslaves* the soul, and the ruin that attends it, are so well conceived and described, as to render this play,

not only a valuable, but an useful acquisition to the stage. The *managers* usually select it for performance in *holiday-times*, when boys from school, apprentices, servants, and the lower kind of tradesmen, frequent the theatres : and I doubt not that this play has been the means of good—what pity is it, that this should be counteracted, by scenes of so contrary a tendency as those of the *Beggar's Opera* !

If *scenical* representations can affect the minds, and influence the conduct of men—how much more may we suppose them attracted by *realities* ? If the conduct of the *Dramatis Personæ*, and the disposal of their several characters, may be instru-

instrumental to promote good or bad example—to discourage or to promote the interests of vice or of virtue—it can hardly be imagined that *less* is to be expected in *real life*—that the *imaginary reprieve* of *Macbeath* can afford incitement to despise and break the Laws, without fear of punishment—and that the *real reprieve* of a convict at the *assizes*, should have a better effect—

—That the imaginary story of *Barnwell*, should fill every eye with tears, every heart with sorrow, and every conscience with an abhorrence and dread of the *first appearance of evil*, as well as of its destructive consequences—and that the *real and cer-*

tain execution of the Laws, upon those who are the objects of them, should not have a like influence upon the minds of men.

If, as the late worthy and learned *Judge Blackstone* observes, "it is  
 " to be looked upon as a monster  
 " in true policy, for a body of men,"  
 (meaning the *Clergy*, in times of ignorance and superstition) "to re-  
 " side in the bowels of a state,  
 " and yet be independent of its  
 " Laws,"—how much more mon-  
 strous is it, for bodies of *thieves* and  
*robbers* to be residing in a country,  
 devouring its bowels, and yet be  
 considered rather as objects of *mercy*,  
 than of *punishment*?—"For, by the  
 " original contract of government,  
 " the



“ the price of protection by the  
 “ united force of individuals, is  
 “ that of obedience to the united  
 “ will of the community. This  
 “ united will is declared in the  
 “ Laws of the land: and that  
 “ united force \* *ought to be* exerted  
 “ in their due and universal execution.”

BLACKST. COM. VOL. IV. 371.

As to *Judges of Assize*, who are  
 to sit on the determination of criminal  
 matters, and to preside where

\* In the *original* we find—*it*—but I have taken  
 the liberty of a small alteration, as rendering the  
 sentence rather more agreeable to the true state of  
 the case,

the



the lives and deaths of their fellow-subjects are brought in question, they are liable to many a very dreadful and heavy tax on their humanity, which nothing but a deep and proper sense of duty can support them under. They are to be considered as standing between the *crown* and the *public*, answerable to *both* for their conduct as magistrates—but they are also to be viewed as *the* \* *ministers of God*, standing, as it were, between the MOST HIGH and their *fellow-creatures*, and answerable, therefore, to God and man, for what they do.

As to the first—their duty is ex-

\* Rom. xiii. 4.

actly

actly defined, prescribed, and limited, by the Laws of the land.

As to the second—the *Holy Scriptures* are replete with instruction for their conduct: what was revealed, as the mind and will of God towards the *Judges of Israel*, in this respect, must ever remain, as the unchangeable *rule of right*, to all *magistrates* whatsoever.

The compilers of that most excellent and scriptural form of worship, the *liturgy of the Church of England*, seem to have been duly sensible of the important and arduous situation of *magistrates*, and of the need they stand in of *divine assistance* in the due execution of their office. We therefore pray—that “it may  
“please

" please God to bless and keep the  
 " *magistrates*, giving them grace to  
 " execute justice, and to maintain  
 " truth."—And again we pray—  
 that " God would grant unto all  
 " that are \* put in authority under  
 " the king, that they may truly and  
 " indifferently minister justice, to  
 " the punishment of wickedness  
 " and vice, and to the mainte-  
 " nance of true religion and vir-  
 " tue."

To all which, I not only add  
 my humble and hearty "AMEN"—  
 but my sincerest wishes, that our  
*magistrates* may so demean them-  
 selves, as to promote and secure the

\* 1 Tim. ii. 1, 2.

public

public peace and welfare, while in this life, and their own eternal reward from the hands of the GREAT JUDGE OF ALL, in that better world, where neither *moth nor rust doth corrupt, and where thieves do not break through nor steal.*

THE END.

[ 17 ]

in which some and certain while in  
the fact, and their own external in-  
vestments from the of the capital  
to the of which is better world  
to the point of view of the  
to the of which is better world  
to the point of view of the



THE END